



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:        Diversified Contract Services, Inc.  
File:             B-224152.2  
Date:             July 27, 1987

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### DIGEST

1. While agency may make an award to lowest priced, technically acceptable offeror on basis of initial offers, the protester was not entitled to award as it was neither low nor technically acceptable.
2. Protest contending that the agency improperly required protester to increase its proposal price by indicating that unless the manning level was increased, its technical proposal would not be acceptable is denied, where the record shows that the agency properly pointed out in discussions that the proposal in several instances failed to provide for full time coverage of food facilities as required by the solicitation, and the protester raised its price to cover cost of increased manning to meet agency's objections to proposal.
3. Protester's request that the General Accounting Office (GAO) conduct an independent investigation of all proposals submitted in response to the request for proposals to insure that all were treated fairly is rejected since the protester has the burden of affirmatively proving its case and GAO will not conduct investigations to establish the validity of a protester's speculations.

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### DECISION

Diversified Contract Services, Inc., protests the Department of the Air Force's award of a firm-fixed-price contract to Willa Brokenbough Parties, the incumbent contractor, under solicitation No. F04699-86-R-0176 for food services at McClellan Air Force Base. Diversified essentially contends that the Air Force improperly required Diversified to

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increase its price in its best and final offer so that Diversified's final price was no longer lower than the awardee's price.

We deny the protest in part and dismiss it in part.

The solicitation was issued on July 30, 1986, with a closing date of November 25, 1986, for receipt of initial offers. The RFP provided that award would be made to the offeror who submitted an acceptable proposal with the lowest evaluated price. Eight proposals were received and a technical team, which had no access to the price data, evaluated proposals. After evaluation, discussions were held. The Air Force sent Diversified a letter dated February 25, 1987, stating that its technical proposal was found to be susceptible to being made acceptable, but which listed 11 points on which the Air Force needed clarification and also included blank manning charts that the Air Force asked Diversified to complete to show full-time coverage of the food facilities. The record indicates that the Air Force evaluators believed Diversified's offer did not comply with certain technical requirements including service 24 hours a day, 7 days a week, contract supervision, and for two cashier lines. Diversified's response to this letter was not sufficient to make Diversified's offer acceptable. By letter of March 31 the Air Force informed Diversified that its technical proposal was still not in compliance with the RFP's requirements and that it was being given one final opportunity to "correct/strengthen" its proposal in six areas primarily relating to manning. The closing date for best and final offers was April 14. Diversified submitted a revised technical proposal which was determined to be acceptable. Diversified, however, in its best and final offer increased its price so that it was not the low acceptable offeror. Award was made to the incumbent contractor, Willa Brokenbough, on May 14, 1987. Diversified's protest was filed with our Office on May 21.

Diversified contends that the Air Force required it to increase its price by indicating during written discussions that unless its manning level was increased, its technical proposal would not be acceptable. Diversified also claims that its initial offer was technically acceptable and that Diversified should have been awarded the contract based on its initial proposal. Finally, Diversified argues that while it was told to increase its manning and, in effect, its cost, Willa Brokenbough was awarded the contract with less actual manning than Diversified.

The Air Force denies that its evaluation of offers was unreasonable or that the award was improper. It specifically denies that Diversified was ever asked to increase

its price or its manning level and points out that in evaluating offers, the placement of manpower in the proper mix at critical times was more important than total manpower.

We find Diversified's contention that its initial proposal was technically acceptable and that the Air Force improperly refused to award it a contract on the basis of its initial offer without merit. The record indicates that Diversified's initial offer was not low or technically acceptable.<sup>1/</sup> The record shows that the technical evaluation team found that Diversified's proposal was susceptible of being made acceptable. Diversified's initial offer, for example, did not meet the requirements for 24 hour, 7 days a week coverage, for supervision, or for two cashier lines. In this regard, by letter dated February 25, the Air Force asked for additional information and clarification to determine if Diversified's proposal could be made acceptable. After Diversified's response, the Air Force found that the proposal required further clarification as to manning. Further, the evaluators found that Diversified's initial proposal did not satisfactorily demonstrate Diversified's understanding of the Air Force's requirements as presented in the RFP performance work statement and asked that Diversified complete manning charts showing 24 hour coverage, 365 days per year. To the extent Diversified disagrees with the Air Force's technical evaluation, we note that a protester's mere disagreement does not render the evaluation unreasonable. Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285. Thus, the record shows Diversified initial offer was not acceptable without discussions.

Diversified also asserts that it was required to increase its manning levels during discussions and thus its price. We find no evidence in the record that the Air Force required Diversified to increase either its price or its proposed hours of service in its technical proposal. The record in fact indicates that the technical evaluation team had no access to the price data of the offerors. The Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(c) (1986), required that the Air Force bring whatever deficiencies it perceived in the technical proposal to the attention of Diversified. See Flight Systems, Inc., B-225463, Feb. 24, 1987, 87-1 CPD ¶ 210. The Air Force did this in

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<sup>1/</sup> We note that two other offerors in the competitive range submitted lower priced initial offers.

two letters requesting clarification of its offer and remedying of deficiencies.

The Air Force did not ask that manning be increased. In its letter of February 25, the Air Force sought specific information concerning proposed manning levels not clearly stated in its initial offer. On March 31, after evaluation of information supplied by Diversified in response to the earlier letter, the Air Force again advised Diversified that its offer still was "lacking in certain key aspects." The Air Force pointed out that its manning charts omitted a contract supervisor and first cook, second baker for certain hours, and did not offer two cashiers for breakfast meals as required under the RFP, and contained certain other omissions and/or inconsistencies. Since the manning deficiencies found were based on the RFP requirements which Diversified was required to comply with, if Diversified needed to increase its staffing, it was because it had failed to consider these requirements in its initial price.

Accordingly, we find that to the extent that, as a result of the discussions, Diversified increased manning to submit an acceptable proposal, and thus its price, there was no impropriety by the agency.

As noted above, Diversified's initial offer was not acceptable and it was not low. Therefore, it could not be awarded the contract based on its initial offer.

Diversified also argues that the awardee may have submitted a lower price because it proposed less actual staff hours than Diversified. The record indicates that the Willa Brokenbough's offer was evaluated as technically acceptable on the basis of its initial offer and that its total hours did not change in its best and final offer, although the awardee reduced its price. The awardee's offer was based on fewer hours than the protester offered. The Air Force points out, however, that in determining technical acceptability, its concern was to assure that the offer met all requirements for food services under the RFP, but it did not specify or require any particular number of hours to meet the requirements. Here, the awardee showed it could perform adequately at a slightly lower staff hours total. Our review of the record does not show that the agency's evaluation of Diversified's or Brokenbough's offer was unreasonable.

Finally, Diversified requests that an independent investigation of all the proposals of the eight offerors be conducted to determine if all were treated fairly. To the extent that Diversified is suggesting that the investigation should be

performed by our Office, we point out that it is the protester that has the burden of affirmatively proving its case and that we will not conduct an investigation to establish the validity of the protester's speculations. Para Scientific Co., B-225302, Mar. 25, 1987, 87-1 CPD ¶ 340.

The protest is denied in part and dismissed in part.

*for* *Seymour E. Pos*  
Harry R. Van Cleve  
General Counsel